

1 WILLIAM L. ANTHONY, JR. (State Bar No. 166026)
wanthony@orrick.com
2 MATTHEW H. POPPE (State Bar No. 177854)
mpoppe@orrick.com
3 ZHENG LIU (State Bar No. 229311)
jenliu@orrick.com
4 ORRICK, HERRINGTON & SUTCLIFFE LLP
1000 Marsh Road
5 Menlo Park, California 94025
Telephone: +1-650-614-7400
6 Facsimile: +1-650-614-7401

7 Attorneys for Defendant
8 VARIAN MEDICAL SYSTEMS, INC.

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

12 UNIVERSITY OF PITTSBURGH OF THE
13 COMMONWEALTH SYSTEM OF HIGHER
14 EDUCATION d/b/a UNIVERSITY OF
15 PITTSBURGH, a Pennsylvania non-profit
corporation (educational),

16 Plaintiff,

17 v.

18 VARIAN MEDICAL SYSTEMS, INC., a
Delaware corporation,

19 Defendant.

Case No. CV 08-02973 MMC

**VARIAN'S ADMINISTRATIVE
MOTION TO FILE UNDER SEAL
EXHIBITS TO SEALED POPPE
DECLARATION**

Pursuant to Civil L.R. 7-11 and 79-5(d), Defendant Varian Medical Systems, Inc. (“Varian”) respectfully submits this administrative request asking the Court to permit the filing under seal of all of the exhibits to the Sealed Declaration of Matthew H. Poppe in Support of Varian’s Motion to Transfer Action to U.S. District Court for Western District of Pennsylvania (the “Sealed Poppe Declaration”), which Varian is submitting on this date, each of which contains information shielded from public disclosure by a judicially sanctioned protective order issued by another U.S. District Court. (*See* Declaration of Matthew H. Poppe in Support of Administrative Motion to File Under Seal at ¶¶ 3-4 & Ex. B, filed herewith.)

In an action between the parties in the United States District Court for the Western District of Pennsylvania, Case No. 2:07-CV-00491-AJS (the “Penn. case”), a protective order was entered on May 24, 2007. (*Id.*) Plaintiff University of Pittsburgh (“UPitt”) and certain non-parties produced materials during discovery in the Penn. case that they designated “Confidential” or “Confidential – Attorney Eyes Only” pursuant to the protective order. In addition, the transcripts of certain depositions of UPitt and non-party deponents in the Penn. case were designated by them as “Confidential” or “Confidential – Attorney Eyes Only” pursuant to the protective order. All of the exhibits to the Sealed Poppe Declaration consist of such materials.

Concurrently herewith, Varian is filing electronically, in the public file, a copy of the Sealed Poppe Declaration without any of the exhibits attached, so that the requested Order from the Court will not deprive the public of information to which it is entitled.

UPitt’s counsel has informed Varian’s counsel that it does not object to the sealing of the materials that are the subject of this Administrative Motion.

For the reasons stated above, and in order to comply with the protective order issued in the Penn. case, Varian hereby moves the Court for an order placing all of the following materials under seal:

1. Exhibit A to the Sealed Poppe Declaration, which is a true and correct copy of excerpts from the deposition of Karun Shimoga, taken on August 31, 2007 in the Penn. case.
2. Exhibit B to the Sealed Poppe Declaration, which is a true and correct copy of excerpts from the deposition of Joel Greenberger, taken on September 21, 2007 in the Penn. case.

1 3. Exhibit C to the Sealed Poppe Declaration, which is a true and correct copy of
2 excerpts from the deposition of Andre Kalend, taken on October 5, 2007 in the Penn. case.

3 4. Exhibit D to the Sealed Poppe Declaration, which is a true and correct copy of
4 excerpts from the deposition of Takeo Kanade, taken on September 19, 2007 in the Penn. case.

5 5. Exhibit E to the Sealed Poppe Declaration, which is a true and correct copy of
6 excerpts from the deposition of Robert Wooldridge, taken on September 26, 2007 in the Penn.
7 case.

8 6. Exhibit F to the Sealed Poppe Declaration, which is a true and correct copy of
9 excerpts from the deposition of Richard Westerhoff, taken on October 3, 2007 in the Penn. case.

10 7. Exhibit G to the Sealed Poppe Declaration, which is a true and correct copy of
11 excerpts from the deposition of Marc Malandro, taken on October 2, 2007 in the Penn. case.

12 8. Exhibit H to the Sealed Poppe Declaration, which is a true and correct copy of a
13 document produced in the Penn. case by Carnegie Mellon University ("CMU") pursuant to
14 subpoena with Bates Nos. CMU 0279 to CMU 0283.

15 9. Exhibit I to the Sealed Poppe Declaration, which is a true and correct copy of a
16 document produced in the Penn. case by CMU pursuant to subpoena with Bates Nos. CMU 0274
17 to CMU 0278.

18 10. Exhibit J to the Sealed Poppe Declaration, which is a true and correct copy of a
19 document produced in the Penn. case by CMU pursuant to subpoena with Bates Nos. CMU 0227
20 to CMU 0236.

21 11. Exhibit K to the Sealed Poppe Declaration, which is a true and correct copy of a
22 document produced in the Penn. case by CMU pursuant to subpoena with Bates No. CMU 0237.

23 12. Exhibit L to the Sealed Poppe Declaration, which is a true and correct copy of a
24 document produced in the Penn. case by CMU pursuant to subpoena with Bates Nos. CMU 0238
25 to CMU 0248.

26 13. Exhibit M to the Sealed Poppe Declaration, which is a true and correct copy of a
27 document produced in the Penn. case by CMU pursuant to subpoena with Bates Nos. CMU 0256
28 to CMU 0257.

1 14. Exhibit N to the Sealed Poppe Declaration, which is a true and correct copy of a
2 document produced in the Penn. case by CMU pursuant to subpoena with Bates No. CMU 0258.

3 15. Exhibit O to the Sealed Poppe Declaration, which is a true and correct copy of a
4 document produced in the Penn. case by CMU pursuant to subpoena with Bates No. CMU 0259.

5 16. Exhibit P to the Sealed Poppe Declaration, which is a true and correct copy of a
6 document produced in the Penn. case by CMU pursuant to subpoena with Bates No. CMU 0260.

7 17. Exhibit Q to the Sealed Poppe Declaration, which is a true and correct copy of a
8 document produced in the Penn. case by CMU pursuant to subpoena with Bates No. CMU 0262.

9 18. Exhibit R to the Sealed Poppe Declaration, which is a true and correct copy of
10 excerpts from the deposition of Alexander Ducruet, taken on October 2, 2007 in the Penn. case.

11 19. Exhibit S to the Sealed Poppe Declaration, which are true and correct copies of
12 documents produced in the Penn. case by UPitt with Bates numbers PITT00001625-72 and 2018-
13 23.

14 20. Exhibit T to the Sealed Poppe Declaration, which is a true and correct copy of
15 excerpts from the deposition of Joel Greenberger, taken on October 24, 2007 in the Penn. case.

16 21. Exhibit U to the Sealed Poppe Declaration, which is a true and correct copy of
17 excerpts from the deposition of Alexander Ciocca, taken on October 3, 2007 in the Penn. case.

18 22. Exhibit V to the Sealed Poppe Declaration, which is a true and correct copy of
19 excerpts from the deposition of Jeffrey Shogan, taken on October 3, 2007 in the Penn. case.

20 23. Exhibit W to the Sealed Poppe Declaration, which is a true and correct copy of
21 excerpts from the deposition of Charalambos Athanassiou, taken on November 16, 2007 in the
22 Penn. case.

23 24. Exhibit X to the Sealed Poppe Declaration, which is a true and correct copy of a
24 document with Bates numbers VMS0001 – 0034, marked as Exhibit 1 at the deposition of
25 Alexander Ciocca, taken on October 3, 2007 in the Penn. case.

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1 For the reasons stated above, Varian respectfully requests that this Administrative Motion
2 be granted.

3 Dated: June ____, 2008

4 WILLIAM L. ANTHONY, JR.
5 MATTHEW H. POPPE
6 ZHENG LIU
7 ORRICK, HERRINGTON & SUTCLIFFE LLP

8 /s/ Matthew H. Poppe
9 _____
10 Matthew H. Poppe
11 Attorneys for Defendant
12 VARIAN MEDICAL SYSTEMS, INC.
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of VARIAN'S ADMINISTRATIVE MOTION TO FILE UNDER SEAL EXHIBITS TO SEALED POPPE DECLARATION was served upon the University of Pittsburgh, through its counsel, via:

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|--------------|---|
| _____ | Hand-Delivery |
| _____ | Facsimile |
| _____ | First Class, US Mail, Postage Prepaid |
| _____ | Certified Mail-Return Receipt Requested |
| <u> X </u> | ECF Electronic Service |
| _____ | Overnight Delivery |

at the following addresses:

Rita E. Tautkus
Morgan Lewis & Bockius, LLP
One Market – Spear Street Tower
San Francisco, CA 94105
rtautkus@morganlewis.com

Dated: July 2, 2008

/s/ Matthew H. Poppe
Matthew H. Poppe

1 WILLIAM L. ANTHONY, JR. (State Bar No. 166026)
wanthony@orrick.com
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jenliu@orrick.com
4 ORRICK, HERRINGTON & SUTCLIFFE LLP
1000 Marsh Road
5 Menlo Park, California 94025
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6 Facsimile: +1-650-614-7401

7 Attorneys for Defendant
8 VARIAN MEDICAL SYSTEMS, INC.

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

12 UNIVERSITY OF PITTSBURGH OF THE
13 COMMONWEALTH SYSTEM OF HIGHER
14 EDUCATION d/b/a UNIVERSITY OF
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corporation (educational),

16 Plaintiff,

17 v.

18 VARIAN MEDICAL SYSTEMS, INC., a
Delaware corporation,

19 Defendant.
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Case No. CV 08-2973 MMC

**[PROPOSED] ORDER GRANTING
VARIAN'S ADMINISTRATIVE
MOTION TO FILE UNDER SEAL
EXHIBITS TO SEALED POPPE
DECLARATION**

1 This Court, having reviewed Varian's Administrative Motion to File Sealed Poppe
2 Declaration Under Seal in accordance with Civil L.R. 7-11 and 79-5, and good cause having been
3 shown therefor, hereby GRANTS the Motion. The following documents submitted by Defendant
4 Varian Medical Systems, Inc. ("Varian"), shall be FILED UNDER SEAL:

5 1. Exhibit A to the Sealed Declaration of Matthew H. Poppe in Support of Varian's
6 Motion to Transfer Action to U.S. District Court for Western District of Pennsylvania ("Sealed
7 Poppe Declaration"), which is a true and correct copy of excerpts from the deposition of Karun
8 Shimoga, taken on August 31, 2007 in *University of Pittsburgh v. Varian Medical Systems, Inc.*,
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Dated: _____

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of [PROPOSED] ORDER GRANTING
VARIAN'S ADMINISTRATIVE MOTION TO FILE UNDER SEAL EXHIBITS TO SEALED
POPPE DECLARATION was served upon the University of Pittsburgh, through its counsel, via:

| | |
|--------------|---|
| _____ | Hand-Delivery |
| _____ | Facsimile |
| _____ | First Class, US Mail, Postage Prepaid |
| _____ | Certified Mail-Return Receipt Requested |
| <u> X </u> | ECF Electronic Service |
| _____ | Overnight Delivery |

at the following addresses:

Rita E. Tautkus
Morgan Lewis & Bockius, LLP
One Market – Spear Street Tower
San Francisco, CA 94105
rtautkus@morganlewis.com

Dated: July 2, 2008

/s/ Matthew H. Poppe
Matthew H. Poppe